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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,446	08/25/2003	Charles F. Smiley	03086	5760
4859	7590	09/22/2005	EXAMINER	
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			KEASEL, ERIC S	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/649,446

**Applicant(s)**

SMILEY ET AL.

**Examiner**

Eric Keasel

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/26&10/18/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims recite the container is “substantially transparent”, the cap is “substantially opaque”, and that the cap colorant matches the container colorant. Either the meaning of “matching colorant” or “substantially” or both are indefinite in this context. What are the metes and bounds of the phrase “matching colorant”? If the cap colorant matches the container colorant (at least in its color and in the ratio of the pigment to the plastic), then it would appear that cap and container would match in the degree of transparency, translucency, or opaqueness. Are the metes and bounds of “substantially” transparent and “substantially” opaque supposed to be broad enough so that transparency and opaqueness overlap for the cap and container colorants to match?

In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

*Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5, 7, 8, 12, 13, and 15 (as understood) are rejected under 35 U.S.C. 102(b) as being anticipated by the Large Size Squeeze Dispenser Catalog page.

Given a broad reading of the range encompassed by “substantially transparent” to “substantially opaque” necessary to have the cap and container colorants match, the catalog page anticipates claims 1-3, 5, 7, 8, 12, 13, and 15.

5. Claims 1-3, 5, 13, and 15 (as understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Gentes et al. (US Patent Number 5,285,933).

Given a broad reading of the range encompassed by “substantially transparent” to “substantially opaque” necessary to have the cap and container colorants match, Gentes et al. anticipate claims 1-3, 5, 13, and 15. The disclosure explicitly recites both mixing various colors and matching the color of the cap to the color of the container (see column 1, lines 62-66). Note the gripping member (16A or 16B) on the wall of the container and the friction member (44) on the cap.

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-15 (as understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of Gentes et al. and Yenglin (US Patent Application Number 2001/0032862 A1).

Given a broad reading of the range encompassed by “substantially transparent” to “substantially opaque” necessary to have the cap and container colorants match, Gentes et al. anticipate claims 1-3, 5, 13, and 15. The disclosure explicitly recites both mixing various colors and matching the color of the cap to the color of the container (see column 1, lines 62-66). Note the gripping member (16A or 16B) on the wall of the container and the friction member (44) on the cap. Yenglin discloses a squeeze bottle with a flexible plastic container and a more rigid

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plastic cap, volumetric measurement on the outside of the container (thus the container is transparent enough to allow light through the container), and multiple guides for cutting the tip opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the volumetric indicia of Yenglin with the bottle of Gentes et al. in order to allow a user to view through the bottle and determine how much substance is in the bottle as taught by Yenglin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the cap and guides for cutting the tip opening of Yenglin with the container of Gentes et al. in order to create a desired tip opening size as taught by Yenglin. Regarding the colors (red, yellow, green, and brown), the examiner takes official notice these colors are old and well known in the art and that one of ordinary skill in the art would select these colors for reasons that are old and well known in the art. Regarding "clarified", the references are silent as the LDPE and HDPE being clarified, the examiner takes official notice that using a clarified LDPE or HDPE are old and well known in the art for reasons that are old and well known in the art. Regarding the ratio set forth in claim 11, the examiner takes official notice that such a range is old and well known in the art and one of ordinary skill in the art would select such a range for reasons that are old and well known in the art.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Eric Keasel 19 SEP 2005*

Eric Keasel  
Primary Examiner  
Art Unit 3754